

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BARKLEY & ASSOCIATES, INC.,
Plaintiff,
v.
QUIZLET, INC.,
Defendants.

Case No.: 2:24-cv-05964-WLH-E

**ORDER RE MOTION TO
BIFURCATE DISCOVERY [89]**

Before the Court is Defendant Quizlet, Inc.’s Motion to Bifurcate Discovery (“Motion”). (Dkt. 89). For the reasons set forth below, the Court **GRANTS** Defendant’s Motion.

I. BACKGROUND

This is a copyright and trademark infringement case. Plaintiff Barkley & Associates, Inc. (“Barkley”) alleges that Defendant Quizlet, Inc. (“Quizlet”) unlawfully distributed Barkley’s proprietary test preparation materials on its platform, including through AI-generated content. Barkley asserts claims for direct and vicarious copyright infringement, trademark infringement and related unfair competition. (*See* Complaint, Dkt. 1).

On November 1, 2024, the Court denied Quizlet’s motion to dismiss, finding that safe harbor protection under the DMCA is an affirmative defense not appropriate

1 for resolution at the pleading stage. The Court ordered limited discovery focused on
2 Quizlet's takedown practices, emphasizing that it would allow early summary
3 judgment to promote efficiency. (*See* Nov. 1, 2024 Hr'g Tr.).

4 Discovery disputes followed, including Barkley's failure to produce a prepared
5 Rule 30(b)(6) witness. The Court granted Quizlet's motion for sanctions, ordered
6 Barkley to produce a new witness and extended the deposition deadline to June 14,
7 2025. (Dkts. 79, 95). During this discovery period, Barkley requested damages-
8 related financial data, which Quizlet declined to produce, citing the Court's earlier
9 limitation on discovery scope. The Court confirmed that damages discovery was
10 premature at that stage. (*See* Nov. 22, 2024 Hr'g Tr. 7:7-7:9).

11 Quizlet now seeks to bifurcate discovery into separate liability and damages
12 phases and filed the present Motion on May 21, 2025. (Mot., Dkt. 89). Barkley filed
13 its Opposition on May 30, 2025. (Opp'n, Dkt. 94). Quizlet filed its Reply on June 6,
14 2025. (Reply, Dkt. 97).

15 II. DISCUSSION

16 Federal Rule of Civil Procedure 42(b) authorizes a court to order separate trials
17 or proceedings on particular issues or claims "for convenience, to avoid prejudice, or
18 to expedite and economize." Fed. R. Civ. P. 42(b); *Estate of Diaz v. City of Anaheim*,
19 840 F.3d 592, 603 (9th Cir. 2016). Courts have broad discretion to sequence
20 discovery where doing so promotes efficiency without unfairly prejudicing either
21 party. *Ellingson Timber Co. v. Great N. Ry. Co.*, 424 F.2d 497, 499 (9th Cir. 1970).
22 One goal of Rule 42(b) is to allow parties to defer potentially burdensome discovery
23 on damages or other secondary issues while threshold legal questions are resolved.
24 *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002).

25 Bifurcation is especially appropriate where early resolution of a central issue
26 could render further litigation unnecessary. *O'Malley v. U.S. Fid. & Guar. Co.*, 776
27 F.2d 494, 501 (5th Cir. 1985). In *Smith v. Alyeska Pipeline Serv. Co.*, for example,
28 the court granted bifurcation where damages discovery would have been complex and

1 the legal defenses, if successful, would eliminate the need to reach that phase. 538 F.
2 Supp. 977, 984 (D. Del. 1982). And while courts sometimes deny bifurcation where
3 liability and damages overlap, bifurcation is still appropriate when it avoids
4 unnecessary expert discovery and production of sensitive business records. *See*
5 *Drennan v. Maryland Cas. Co.*, 366 F. Supp. 2d 1002, 1008 (D. Nev. 2005) (declining
6 to bifurcate discovery in that case but recognizing that bifurcating trial was
7 appropriate where threshold issue could dispose of case).

8 In evaluating a request to bifurcate discovery, courts consider factors such as
9 the complexity of the case, the degree of overlap between liability and damages
10 issues, the risk of prejudice or confusion, and whether separating phases will promote
11 efficiency. *Moreno v. NBCUniversal Media, LLC*, No. CV 13-1038 BRO (VBKx),
12 2013 WL 12123988, at *2 (C.D. Cal. Sept. 30, 2013) (citing *Calmar, Inc. v. Emson*
13 *Research, Inc.*, 850 F. Supp. 861, 866 (C.D. Cal. 1994)). The burden rests with the
14 party seeking bifurcation to demonstrate that doing so will “promote judicial economy
15 and avoid inconvenience or prejudice to the parties.” *Spectra-Physics Lasers, Inc. v.*
16 *Uniphase Corp.*, 144 F.R.D. 99, 101 (N.D. Cal. 1992).

17 Here, the Court finds that bifurcating discovery into separate liability and
18 damages phases is appropriate and promotes efficiency. This case involves threshold
19 defenses—namely, DMCA safe harbor and fair use—that, if successful, would
20 dispose of Plaintiff’s copyright claims in their entirety. (Mot. at 10-11). Requiring
21 the parties to proceed with full damages discovery, especially expert disclosures,
22 damages modeling and production of sensitive financial and advertising data, before
23 resolving these threshold issues would undermine the efficiency the Court originally
24 intended. (Mot. at 12). Quizlet represents that damages discovery would require
25 production and analysis of voluminous financial data and third-party metrics, the
26 engagement of multiple experts and potential exposure of competitively sensitive
27 business information. *Id.* The Court finds those representations credible and agrees
28

1 that deferring such discovery until after a ruling on dispositive defenses would
2 conserve resources for both parties.

3 This case is analogous to *Smith*, where the court granted bifurcation because
4 resolving the initial liability issue could moot the need for complex damages
5 discovery. 538 F. Supp. at 984. Barkley's arguments concerning settlement and
6 general delay do not outweigh the tangible efficiency gains and cost savings likely to
7 result from staging discovery. (*See* Opp'n at 3).


8 Accordingly, the Court concludes that bifurcation under Rule 42(b) is
9 appropriate at this stage and will allow the parties to focus on resolving liability before
10 proceeding, if necessary, to damages discovery.

11 **III. CONCLUSION**

12 For the reasons stated above, and in light of the Court's discretion under Rule
13 42(b) to manage the sequence of discovery in the interest of efficiency and judicial
14 economy, the Court **GRANTS** Defendant's Motion to Bifurcate Discovery.
15 Discovery shall proceed in two phases: (1) liability, and, if necessary, (2) damages.

16 **IT IS SO ORDERED.**

17
18 Dated: June 20, 2025


HON. WESLEY L. HSU
UNITED STATES DISTRICT JUDGE